
EVALUATOR MANUAL TRANSMITTAL SHEET

<u>Distribution:</u> <input checked="" type="checkbox"/> All Child Care Evaluator Manual Holders <input type="checkbox"/> All Residential Care Evaluator Manual Holders <input type="checkbox"/> All Evaluator Manual Holders	<u>Transmittal No.</u> 01FCCH-01
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Subject:

Family Child Care Homes (Blues)

Reason For Change:

Due to many revisions and cleanup of policy interpretation and procedures, the entire section of Family Child Care Home blues are being reissued. In addition, for clarity and consistency, a policy decision was made to spell out acronyms and reformat text. Revised sections are shaded.

Filing Instructions:

☒ REMOVE – entire section

☒ INSERT – revised section

Approved:

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5-31-01

Date

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REGULATION INTERPRETATIONS

AND

PROCEDURES

FOR

FAMILY CHILD CARE HOMES

FAMILY CHILD CARE HOMES

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ARTICLE 1 GENERAL REQUIREMENTS AND DEFINITIONS**102352 DEFINITIONS****102352**

(f)(1)

POLICY

The house next door to the family child care provider or an unattached building or garage does not constitute “the caregiver’s own home.” Health and Safety Code Section 1597.40(a), which states public policy to provide a home environment in residential surroundings, states a family child care home should provide the same home environment as provided in a traditional home setting. An unattached building or garage without toilets, kitchen or bedrooms does not provide a traditional home setting.

Since the language of the California Child Day Care Act is very clear, a waiver will not be approved which authorizes use of a facility other than “the provider’s own home” or a “traditional home setting.”

However, unattached buildings and garages may be used as additional play space, etc. when free access to the house is allowed.

ARTICLE 2 LICENSING

102357 OPERATION WITHOUT A LICENSE

102357

(a)(2) PROCEDURE

The written notice shall be on the LIC 809 **Facility Evaluation Report**. The unlicensed provider is to be notified of the requirements to have a license per Health and Safety Code Section 1596.80 and of the procedures for obtaining a license. Refer to Policy under Section 102357(a)(4).

(a)(3) POLICY

Issue the Notice of Operation in Violation of Law (LIC 195A) **immediately**, without waiting the 15 days, if there is a risk to the health and safety of the children in care.

(a)(4) POLICY

The instructions and procedures in Sections 1596.891 and 1597.61 of the Health and Safety Code and California Code of Regulations Sections 102357, **102393 and 102394** of Title 22, shall be followed when an unlicensed **family child care** operation is substantiated.

When the Department determines the need to issue a cease and desist order, the Notification of Operation in Violation of Law (LIC 195A) is to be used. **No other notice or order to cease and desist operation shall be issued to any family child care operator.**

PROCEDURE

Send the LIC 195A by certified mail, return receipt requested.

If the operator refuses to discontinue operation following notification, an injunction may be obtained. Contracting county licensing agencies shall contact the appropriate county consultant for consultation and assistance in obtaining injunctions. District offices shall contact the appropriate Regional Office.

102358 LICENSE EXEMPTIONS

102358

(a) POLICY

Examples of **relatives** are spouse, parent, stepparent, son, daughter, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any such person of the preceding generation denoted by the prefix “grand” or “great” or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution.

Exemptions are granted for any combination of the above exemption criteria.

102358 LICENSE EXEMPTIONS (Continued)

102358

(a) POLICY (Continued)

In addition to the provision that no payment be made for care provided, a **parent/authorized representative** cooperative must meet all of the following criteria to be exempted from licensure:

1. In a cooperative arrangement, parents must combine their efforts so that each **parent/authorized representative**, or set of parents, rotates as the responsible caregiver with respect to all the children in the cooperative, on an approximately equal time basis.
2. Any person caring for children must be a **parent/authorized representative**, legal guardian, or stepparent of at least one of the children in the cooperative.
3. Although there can be neither payment of money **or receipt of in-kind** income in exchange for the provision of care, it is not the intent of this policy to prohibit payment for outside activities, the amount of which may not exceed the actual cost of the activity. Examples of such activities may include a trip to the circus or to the movies, or hiring a magician or a clown to come into the home.
4. Supplies may be contributed but may not be used as compensation for care, or be contributed in lieu of participation as a caregiver.

Dual licenses for family child care and foster family home are not prohibited by either the California Community Care Facilities Act, California Child Day Care Act, or related regulations. On this basis, a person(s) may apply for a license to provide both family child care and foster family home at the same physical location for the same time period. The licensee must meet the licensing requirements for each category. Each category will be licensed by the licensing agency having responsibility for the category (e.g., a county who only contracts for foster family homes will license that category and the State district office will license the family child care). Licensing information may be shared between these offices.

An additional criterion which allows exemption from licensure is the provision of care by a **parent/authorized representative** or non-parent in more than one home on a rotating basis. Because a day care license is composed of a name inseparably attached to an address and is not transferable, care provided in more than one home by the same person or persons could not be licensed.

Facilities located on federal government property, including military bases, are exempt from licensure because State laws do not apply on most federal lands. This exemption also applies to facilities located on Indian reservations.

PROCEDURE

When facilities located on federal government properties or Indian reservations require and/or request licensure, an application for a license may be processed if the personnel in charge of the operations on the land (i.e., military base commander, director, etc.), or in the case of Indian reservations, the Indian tribal council, agrees to cooperate with all licensing procedures and abide by rules and regulations. This agreement must be obtained on the standard form LIC 996 or LIC 996A as appropriate.

Additionally, a written agreement from the applicant may be obtained, and reflected on the standard applicant agreement form LIC 997 or LIC 997A as appropriate. The agreements should be signed by the District Office Manager or the County Welfare Director, or his/her designee.

102358 LICENSE EXEMPTIONS (Continued)

102358

PROCEDURE (Continued)

Upon completion of an agreement with an Indian Tribal Council, the Bureau of Indian Affairs should be notified. A copy of the agreement should be sent to:

U. S. Department of Interior
Sacramento Area
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825
Attention: Area Director

The following information is provided as a result of questions posed related to the use of the agreement forms and should clarify any immediate questions related to this process.

1. If the LIC 997 or LIC 997A are completed in addition to the agreements with the federal entity or Indian Tribal Council (LIC 996 or 996A), then a new LIC 997 or LIC 997A should be completed at time of **annual** visit. This serves as a reminder to the licensee of his/her responsibilities for licensure.
2. The processing of administrative actions should be handled in the same manner as with any other facility. No special procedures are necessary or required. However, if an administrative action is initiated, the federal or Indian entity should be informed immediately in order to elicit their cooperation.
3. This agreement does not limit the authority of federal personnel to investigate abuse complaints. Rather, this agreement provides assurances that the licensing representatives be allowed to also conduct investigations when the complaint involves a licensed facility.
4. If a facility is issued an order for temporary suspension or revocation and the facility fails to cease operation, the federal entity must ensure that all operations cease immediately. If the federal entity fails to cooperate, the agreement can be terminated and licenses deemed invalid.

If it is not clear whether a facility is exempt from licensure, discuss with your supervisor the need for a policy determination from **Advocacy & Policy Branch**.

ARTICLE 3 APPLICATION PROCEDURES

102368 **LICENSE**

102368

(c) **POLICY**

The Americans with Disabilities Act, which was signed into law on July 26, 1990, gives civil rights protections to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. The term “public accommodations” includes Child Care Facilities (day care centers and family child care homes).

Under the Americans with Disabilities Act, an individual (including a child) is considered “disabled” if he/she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment (meaning other people treat the individual as if he/she is disabled whether or not that is actually the case). The Americans with Disabilities Act also prohibits discrimination against an individual who is “associated” with an individual with a disability.

Community Care Licensing Division is not responsible for enforcing the provisions of the Americans with Disabilities Act.

Because Community Care Licensing Division is not responsible for enforcing the Americans with Disabilities Act, Licensing Program Analysts should not give advice to licensees about their responsibilities under the Americans with Disabilities Act. Licensees should, however, be encouraged to contact Community Care Licensing Division under the following circumstances:

1. If licensees believe that our regulations are an impediment to fulfilling their obligations under the Americans with Disabilities Act.
2. If licensees are asked to make a “reasonable accommodation” under the Americans with Disabilities Act. (This will give Community Care Licensing Division the opportunity to provide input before the parties negotiate a settlement that might not be considered appropriate by Community Care Licensing Division or the State Fire Marshal. Involving Community Care Licensing Division early in the process will enable Community Care Licensing Division to effectively raise such issues as the intent of the regulations.)

In addition, the Child Care Advocate (Ombudsman) in each Region will serve as the clearinghouse for child care issues related to the Americans with Disabilities Act. The district offices can still raise questions with the **Advocacy Policy Branch**, but the district offices should in all cases make the Child Care Advocate in their Region aware of Americans with Disabilities Act issues. The expectation is that the Child Care Advocates will identify regional and/or statewide issues that may be presented to **Advocacy Policy Branch** in issue-memo format. **Advocacy Policy Branch** will assume responsibility for requesting legal opinions as necessary.

102368 **LICENSE** (Continued)

102368

(c) **POLICY** (Continued)

Individuals who wish to file a complaint under the Americans with Disabilities Act, or who wish to obtain further information, should be advised to contact the following agencies:

1. The first step would be to contact the local office of the State Department of Fair Employment and Housing. Department of Fair Employment and Housing has a wealth of information and will coordinate with federal agencies as appropriate.
2. For additional information, individuals should contact:

U.S. Department of Justice
Civil Rights Division
Disability Rights Section
P.O. Box 66738
Washington, D.C. 20035-6738
(202) 514-0301
(202) 514-0383 TDD **Voice**
Internet: www.usdoj.gov/crt/ada/adahom1.htm

POLICY**CONDITIONS FOR FOREITURE OF LICENSE – NON-PAYMENT OF FEES**

Section 1596.803 is added to the Health and Safety Code which states in part that failure to pay the required license fees, including the finding of insufficient funds to cover bona fide business or personal checks submitted for this purpose, shall constitute grounds for denial of a license or forfeiture of a license. Until regulations are developed regarding forfeiture of a license due to nonpayment of licensing fees use Health and Safety Code Section 1596.803 as your citing authority.

The object of citing a licensee as “unlicensed” without an actual facility visit when the licensee admits to continuing operation will save both the time and the effort of local licensing office staff.

PROCEDURE

Refer to Evaluator Manual Annual Fees Section 3-1400.

The **PROCEDURE** stated below applies to Health and Safety Code Section 1596.803.

When there is no proof of payment or information stating the licensee has ceased operation and surrendered their license in the facility file, licensing staff shall attempt to contact the licensee to find out if the licensee plans to continue operating.

If the licensee is believed to be operating, licensing staff are to contact the licensee by phone and advise them that their annual licensing fee must be paid prior to their anniversary date. Licensees are to be advised that failure to pay their annual fee shall result in the forfeiture of their license and may make them subject to civil penalties.

POLICY**CONDITIONS FOR FORFEITURE OF LICENSE – (SELL/TRANSFER, SURRENDER, MOVING, CONVICTIONS, DEATH, ABANDONMENT)**

Section 1596.858 is added to the Health and Safety Code which clarifies that a license is forfeited by law prior to the expiration date under the following circumstances.

1. The licensee sells or transfers the facility or facility property (unless the property sale/transfer does not result in a change of licensee).
2. The licensee surrenders the license to the licensing agency.
3. The licensee moves the facility from one location to another. Licensees do not have to complete the entire application process when applying for a license for the new location.
4. The licensee is convicted of an offense specified in Sections 220, 243.4, 264.1, paragraph (1) of 273(a), 273d, 288, 289 of the Penal Code or is convicted of another crime specified in 667.5(c) of the Penal Code.
5. The licensee dies.
6. The licensee moves or abandons the facility without notifying the department.

A licensee may retain a license even if he/she has voluntarily chosen to discontinue operating the facility. In such cases, the licensee is not relieved of the responsibility to comply with regulations Section 102417. For example, the licensee must maintain a working smoke detector device, fire extinguisher, etc.

In keeping with this policy, Community Care Licensing Division is prohibited from requiring a licensee to relinquish the facility license because the facility is not operating; however, the licensee may choose the option of voluntarily surrendering the license. If the facility is in substantial compliance and no administrative action is being considered, the evaluator should encourage this option. Acceptance of a surrendered license shall be approved only by the District Office Manager or his/her designee. Explain to the licensee that a surrendered license is equivalent, under the law, to forfeiture of license.

The local licensing office shall acknowledge, in writing, receipt of the surrendered license, or receipt of a statement of intent to surrender the license. Under no circumstances shall the surrendered license deprive the Department of its authority to institute or continue administrative actions against the licensee.

When a forfeiture is the result of a surrender of a license, do not use the term “surrender”; use the language in the following procedures.

PROCEDURE

1. If there is no pending or planned administrative action and the licensee surrenders his/her license to the local licensing office stating any of the following:
 - He/she will no longer operate;
 - The facility is going out of business;
 - The licensee is moving;
 - The licensee has moved.
 - a. Send written acknowledgement to the licensee at the last known address stating the following:

“Effective (date), your license is forfeited by operation of law pursuant to Health and Safety Code Section 1596.858. Your license is no longer valid and all provision of care and supervision must cease. If you have not already done so, please send your license to the above address. If you wish to operate a community care facility again you must reapply and be approved for a new license.”

NOTE: The effective date should be the date of notification, unless a later closure date has been agreed upon.
 - b. Close the facility file.
2. When the licensee of a family child care home surrenders his/her license to the local licensing office stating that he/she will no longer operate and there is evidence which may support an administrative action, or an administrative action has been initiated:
 - a. Acknowledge receipt of the license as follows:

“We acknowledge receipt of your license and/or your statement that you no longer wish to be licensed for a **child care facility**. This acknowledgement does not deprive the Department of its authority to institute or continue an administrative action against your license. You cannot apply for a new license until two years have elapsed from the date of a revocation.”
 - b. District Offices are to notify legal staff; county licensing agencies are to notify regional administrative action analyst to discuss the appropriateness of pursuing/continuing the administrative action.
 - c. If the Department/Licensing Agency decides to drop the administrative action, the licensee must be notified in writing of the effective forfeiture of the license.
 - d. Document in the case file the reason for acknowledging the receipt of the license and/or the licensee’s statement that they are surrendering their license, but not consenting to the surrender.

102368 **LICENSE** (Continued)

102368

PROCEDURE (Continued)

3. When the licensee of a family child care home surrenders the license in order to avoid having to comply with licensing regulations, but continues to operate, i.e., provide care and supervision:
 - a. Acknowledge receipt of the license as follows:

“We acknowledge receipt of your license and your statement that you no longer wish to be licensed as a family child care home. This acknowledgement is not consent to the surrender of your license. Since you continue to operate a family child care home, you are required by law to be licensed. You are, therefore operating a licensed facility and must comply with the rules and regulations related to such operations.”
 - b. Until the facility ceases operation, continue to visit the facility, document any deficiencies on the LIC 809 Facility Evaluation Report, and monitor all corrective actions.
 - c. **Follow the steps in Family Child Care Homes Regulations Section 102357 Operation Without a License and Evaluator Manual Section 1-0050, Unlicensed Facilities.**
4. When the Licensing Agency discovers that the licensee has moved, but the Community Care Licensing Division has not been notified of the move, and there is no pending administrative action:
 - a. Refer to Procedure 1, above.
 - b. **Document in the file acknowledgement of the forfeited license outlining the reasons, conditions and documentation that led to this action.**
1. The applicant and each person subject to fingerprint requirements has signed and submitted the criminal record statement stating he/she has never been convicted of a crime other than a minor traffic infraction.

102369 **APPLICATION FOR INITIAL LICENSE**

102369

(a) **POLICY**

Section 1596.877 of the Health and Safety Code became effective January 1, 1986. Those persons who are required to submit a fingerprint card are also required to complete the Child Abuse **Central** Index Check (LIC 198) and submit both the fingerprint card and the Child Abuse **Central** Index Check to the Licensing Agency.

A family child care license is not to be issued until the Child Abuse **Central** Index Check is cleared.

102369 APPLICATION FOR INITIAL LICENSE (Continued)

102369

(b)(5)

POLICY

Sufficient qualifying experience consists of one year's experience working with children at the elementary school age level and below, including but not limited to:

Sunday school teachers

Teachers' aides

Baseball, soccer, or other sports coach

Campfire, Brownie, Bluebird, Cub Scout, Boy Scout, Girl Scout, or other comparable group leaders

- (8) To initiate the application process, all required documents must be properly completed and submitted to the licensing agency. The Application for Family Child Care Home Licensing (LIC 279), Criminal Record Statement (LIC 508) or (LIC 279A), Child Abuse Index Check (LIC 198) and Fingerprint Card (FD 258) are mandatory license application forms.

Incomplete application packages should not be accepted and should be returned to the applicant.

Health and Safety Code Section 1597.59 requires a family child care license to be granted or denied within 30 days after receipt of all appropriate licensing materials provided:

1. A site visit has been made which determines the home is in compliance.
2. The applicant and each person subject to fingerprint requirements has signed and submitted the criminal record statement stating he/she has never been convicted of a crime other than a minor traffic infraction.

obtained through a written statement by the subject individual. It is, however, necessary to obtain a certified copy of the judgment of conviction in **all cases** when the conviction is grounds for denial or revocation of a license.

102371 FIRE SAFETY CLEARANCE**102371****(a) POLICY**

Family child care homes with a capacity of **eight** or fewer are not required to have a fire clearance issued by the State Fire Marshal even if nonambulatory children are in care.

All family child care homes shall have both a smoke detector device and a fire extinguisher that meet standards set by the State Fire Marshal. Fire extinguishers must be rated 2A, 10B:C to meet the State Fire Marshal's standards. Advise family child care home providers they should contact their local fire department if they are unsure if their smoke detector device and fire extinguisher meet the State Fire Marshal standards.

Family child care homes for 9-14 children are required to secure an appropriate fire clearance. The fire clearance request shall state the total number (licensed capacity) of children who will be cared for in the family child care home. No distinction should be indicated on the request for fire clearance between the natural children of the care provider(s) and the day care children. A child is not deemed nonambulatory solely because he/she is deaf, is blind, or prefers to use a mechanical aid.

For fire extinguisher or smoke detector requirements, see **Family Child Care Regulations** Section 102369(b)(7).

Due to statutory changes effective January 1, 1991, State or local fire jurisdictions are no longer responsible for processing requests for fire clearances for large family child care homes. All fire jurisdictions have been instructed that the responsibility for such clearances has been transferred to the local building inspectors. This action is based on a change in responsibility for all R-3 occupancies, specifically large family child care homes.

Policy regarding bedridden children is as follows:

1. Family child care homes with a capacity of six or fewer and family child care homes for 7-14 children are required to obtain a bedridden fire clearance prior to accepting a child who is bedridden.
2. The Uniform Building Code Section 403, defines a bedridden person as "a person confined" to a bed, requiring assistance in turning or unable to independently transfer to and from bed, and unable to leave a building unassisted during emergency conditions." This does not apply to infants ages zero to two years of age.
3. Bedridden children shall be allowed in family child care homes so long as the facility does not provide medical care to the child.
4. No bedridden child shall be admitted to a family child care home unless the home has secured a bedridden fire clearance.

Licensees found caring for bedridden children shall be informed that the child cannot be cared for unless the facility obtains the appropriate fire clearance. The licensee shall be instructed to immediately notify the child's parents concerning this requirement. If the licensee requests a bedridden clearance, the licensing analyst shall indicate on the STD 850 that a bedridden clearance is required.

102371 FIRE SAFETY CLEARANCE (Continued)**102371****(a) PROCEDURE**

Determine whether a fire safety inspection is necessary and, if so, request a fire clearance using the Fire Safety Inspection Request (STD 850).

There may be arrangements made at the local level for fire departments to continue processing fire clearances through an agreement with the building officials or at least until other systems are developed. For those situations when processing by the fire authority has ceased, the district office should identify the county agency responsible for enforcing building standards and submit the fire clearance request to the alternative agency using the roster of local building officials available in the district office. If a response to the fire clearance request is not obtained within a reasonable amount of time, a follow-up should be sent.

102384 APPLICATION/ANNUAL FEES**102384**

See Evaluator Manual Sections 3-1000 through 3-1700 for information about annual licensing fees and procedures.

PROCEDURES**For District Office**

NOTE: *The Annual License Fee Notice is now a back-to-back one-page letter generated by the Licensing Information System. The LIC 201F will no longer be used.*

102391 INSPECTION AUTHORITY**102391****(a) POLICY**

For proper identification when visiting facilities, all evaluators will obtain a picture identification card issued by the State or county. Until this picture ID card is received, a letter of introduction on Department letterhead or on an official business card is acceptable.

Additionally, Section 1596.857 has been added to the Health and Safety Code establishing the parent's or **authorized representative** to enter and inspect Child Care Facilities without advance notice during normal operating hours while his/her child is receiving care. The facility may deny access to adults whose behavior presents a risk to children **or others**. Discrimination or retaliation against the child, parent or **authorized representative** for exercising the right to inspect or for having lodged a complaint with the licensing agency against the facility is prohibited. Also, the facility is required to inform the children's parents and guardians of the right to inspect and to post a written notice of this right. The licensing agency is required to issue a warning citation for initial violation of this section. Subsequent violations are subject to a \$50 civil penalty.

102391 INSPECTION AUTHORITY (Continued)**102391**

(a)

PROCEDURE

1. Include in the application packets for day care centers and family child care home, the **Family Child Care Homes** Notification of Parents' Rights (LIC 995A) and discuss during applicant orientation meetings.
2. Advise licensees that they must provide a copy of the LIC 995A to the parents, obtain parents' signatures acknowledging receipt and that the signed form must be maintained in the child's file for review. (The form has been designed so that the signature and date portion may be detached for filing in the child's record.)
3. Provide a copy of the LIC 995A to current licensees at the time of the next site visit. Additional forms can be photocopied, ordered through the Department of Social Services warehouse, or retrieved from the Internet at www.dss.ca.gov. The Licensing Program Analyst must note on the LIC 809 that the forms have been provided.
4. Check the children's files for copies signed by parents or authorized representative(s) and cite if not there.

Facilities are subject to a notice of deficiency when a parent/guardian is denied access or retaliated against for exercising their rights. Deficiencies shall be cited using the LIC 809 and related processes. Additionally, a civil penalty of \$50 per violation may be imposed for any subsequent violation of this right. Existing civil penalty procedures and forms currently in use by District Office staff shall continue to be used for this purpose.

102392 SITE VISITS**102392**

(a)(3)

POLICY

Sexual or physical abuse must be reported to State Department of Education-funded Resource and Referrals and/or State Department of Education within 24 hours of substantiation.

PROCEDURE

See **Family Child Care Regulations Section 102403** for **Licensee** Complaints.

If an evaluator observes, or has reason to believe, the home is operating outside the hours of operation listed on the Application for a Family Child Care License (LIC 279), inspection during these hours is permitted to verify if, in fact, that is happening. If the facility is operating at that time, providing care and supervision, a full facility inspection is permitted. In addition, during routine inspections of the home, if children are seen in areas designated "off limits", inspection of these areas is permitted to determine the adequacy of care and supervision.

102392 SITE VISITS (Continued)

102392

PROCEDURE (Continued)

- Before making a field visit, review the facility file to determine the days and hours of operation listed by the licensee on the LIC 279.
- Verify with the licensee the days and hours of operation during the home visit. If the days and hours are different than listed on the LIC 279, document the new days and hours on the LIC 809.
- Licensing evaluators shall attempt to secure voluntary entrance to family child care homes. If admittance to the home is refused, document such on the **Facility Evaluation Report** (LIC 809), notify the licensing supervisor, and attempt to obtain a law enforcement escort. If this is unsuccessful, the District Manager should notify the Regional Office to contact Department of Social Services staff attorneys to secure an inspection warrant. County licensing agencies should notify the Regional Office Administrative Action Analyst.
- Licensing evaluators shall attempt to secure voluntary permission from the licensee to view “off limit” areas if children are suspected of occupying an “off limit” area. If the licensee refuses to allow access to this area(s) document such on **the Facility Evaluation Report** (LIC 809).

The licensing evaluator shall then take other measures, e.g. wait outside and count children in care as they leave, interview children and/or **parents/authorized representatives**, notify the licensing supervisor and determine if the District Manager should notify the Regional Office to contact Department of Social Services staff attorneys to secure an inspection warrant. County licensing agencies shall notify the Regional Office Administrative Action Analyst.

See Evaluator Manual Reference Material **Documentation** Section for **completing the LIC 809**.

ARTICLE 5 ADMINISTRATIVE ACTIONS**102401 DENIAL OF A LICENSE****102401****(a) POLICY**

No person shall be denied a family child care home license solely because he or she is a recipient of food stamps, Aid to Families with Dependent Children; Supplemental Security Income/State Supplemental Program, or some other welfare benefit.

If an applicant appears “mentally ill” and there is medical evidence which demonstrates a mental illness which would preclude the applicant from having the ability/capability to care for children, the license should be denied. This medical evidence may be obtained by requiring a medical/psychiatric examination before licensure as well as character references from doctors, neighbors, etc. Health and Safety Code Sections 1596.72, 1596.73 and 1597.30 may be cited as the authority.

Licensing agencies are to notify Resource and Referral Agencies funded by the State Department of Education, Child Development Division of the denial of an application. **Notification is not required if the State Department of Education funding is solely through the Office of Child nutrition (food service).**

The following is a list of some common conditions which may necessitate the denial of the application:

1. Failure to meet regulations for securing fire, (if applicable), health, and safety clearances.
2. A history of criminal convictions with insufficient evidence of rehabilitation or convictions for crimes prohibited from exemption (See Health and Safety Code Section 1596.871).
3. The proposed home does not meet licensing requirements.
4. The applicant fails to follow through with the application process.

When it is determined that an application will be denied, applicants shall not be given the option to withdraw the application prior to the denial action. In this circumstance, licensing agencies shall not consent to a request to withdraw an application. If the licensing agency accepts a withdrawal of the application in writing, the licensing agency cannot proceed with any administrative action on the case. The denial of a license process serves to officially document and record the denial actions for future reference. The denial process does not apply when an applicant withdraws his/her application and the licensing agency, at the time of the withdrawal action, has no grounds for a license denial action. **See Family Child Care Home Regulations 102401 and Evaluator Manual Enforcement Actions Section (Administrative Action Options).**

102401 DENIAL OF A LICENSE (Continued)**102401****PROCEDURE**

A Notification of Initial Application Denial (LIC 192) signed by the District Office Manager or County Licensing Supervisor advises the applicant of the reasons for denial.

The licensing agency shall send all denial letters by certified mail. District offices shall send a copy of the denial letter to the Regional Office Manager. The letter of denial further informs the applicant that the denial action can be appealed within 15 days and to send written appeal to the appropriate Regional Office Manager.

NORTHERN REGIONAL OFFICE

8745 Folsom Boulevard, Suite 130
Sacramento, CA 95826
(916) 229-4500
FAX (916) 229-4508
Cclnreg@dss.ca.gov

COASTAL REGIONAL OFFICE

801 Traeger Avenue, Suite 105
San Bruno, CA 94066
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(c)

PROCEDURE

In the event the applicant appeals the denial, the regional office shall acknowledge receipt of the letter, advising the applicant that an administrative hearing will be scheduled. A copy of the acknowledgment letter is sent to the District Office or the county. Steps will be initiated by the regional office for an administrative hearing to review the denial action. During this hearing the evaluator may be required to testify. The documentation previously gathered by the evaluator will be used to show why the denial action was justified. If the applicant does not file an appeal the denial action is complete and no further action is needed other than verifying that the facility is no longer operating.

See Evaluator Manual Enforcement Actions Section (Administrative Action Options).

**102402 REVOCATION OR SUSPENSION OF A LICENSE
OR REGISTRATION****102402****(a) POLICY**

The Community Care Licensing Division is to notify Resource and Referral Agencies and agencies funded by the State Department of Education, Child Development Division, of the following:

- Revocation or Temporary Suspension Order actions when issued against child care facilities; and
- Cases of physical or sexual abuse within 24 hours of substantiation; and
- Final resolution of both of the above.
- In addition, the licensing agency is to notify the Child Development Division of State Department of Education of substantiated serious allegations against facilities funded by the Child Development Division.

Notification is not required if the State Department of Education funding is solely through the Office of Child Nutrition (food service).

For information regarding time frames, procedures, and notification requirements to other agencies, see Health and Safety Code 1596.8865 and 1596.8895; and the Enforcement Section of the Evaluator Manual.

102403 LICENSEE COMPLAINTS**102403****(a) POLICY**

NOTE: Licensees shall be made aware of **their appeal rights regarding disputed issues.**

ARTICLE 6 CONTINUING REQUIREMENTS

102416.5 STAFFING RATIO AND CAPACITY

102416.5

(a)

POLICY

The license shall be issued for the **maximum** number of children **eight or 14** who may be cared for at any one time; this number shall be printed on the license. The licensing agency may reduce the allowable capacity with consent of the applicant/licensee. Otherwise, reduction in capacity may be required if the children in care are/would be subject to hazardous health or safety conditions.

The capacity includes the licensee's and/or assistant caregiver's own children under the age of ten who live in the family child care home and are present in the home while care is being provided. Capacity means the number of children in care at any given time, with no overlaps (e.g., during the morning the small family child care home provider cares for four infants, later one leaves and three older children come to the facility, the provider now may care for three infants plus three older children **or two infants, six year olds, and four preschool children**).

Children of visiting relatives, such as nieces, nephews, etc., shall be counted in the capacity--if ten years old or younger--when the parent/authorized representative of the child is not present.

Friends of the licensee's children must be included in the capacity when the child is under the age of ten and or the child cannot come and go as he/she pleases and the parents pay for and/or expect child care services. In addition, when the licensee's child is under ten years of age and brings his/her friends over, the friends, regardless of their age are counted in the capacity.

If the Licensing Program Analyst has concerns regarding the safety of children in care, each situation would require close examination and Licensing Program Analyst judgement to determine if there is a licensing violation. The main factors to be considered are:

1. Does the presence of **friends of the licensee's** children endanger the children receiving child care services?
2. Does the presence of **friends of the licensee's** children prevent or impede the licensee from providing adequate care and supervision to the children receiving child care services?
3. Do the parents of **friends of the licensee's** children visiting in the home pay for and/or expect child care services?
4. Does the child/friend **of the licensee's children** require care and supervision, such as being disabled and not able to perform daily living functions, or is the licensee providing care and supervision of the disabled child/friend.

If any of these circumstances exist and there is an obvious health and safety risk for children in care, then the licensee should be cited for a licensing violation.

102416.5 STAFFING RATIO AND CAPACITY (Continued)**102416.5****(a)****POLICY (Continued)**

The stated capacity shall not be reduced at the request of the licensee. The licensee is, of course, allowed to accept **fewer** children for care than the Stated capacity. However, the license shall still state the maximum capacity (either **eight or 14**) and the notation that the licensee's **own** children **under the age of ten** are counted in the total capacity.

If the licensing agency reduces capacity below the maximum, and the applicant/licensee agrees with the limited capacity and so amends the application, the appropriate license shall be issued. If the applicant/licensee objects to the lower capacity, the licensing agency shall immediately send by certified mail a written denial of maximum capacity using the **Notification of Initial Application Denial** (LIC 192).

When the license is issued for fewer children than requested, the licensee shall be notified in writing of the reasons for the limitation and of the licensee's rights to appeal the decision.

If the licensee does not agree to the decrease in capacity, the Department has the authority to initiate revocation action.

It should be noted that an applicant who has been denied the maximum capacity and who has submitted a written appeal, may commence operation of his/her facility at the capacity that the licensing agency has approved, providing all other requirements have been met, and a license has been issued to accommodate this. The applicant shall be sent a license for the approved capacity at the same time the license for the maximum capacity is denied.

In addition, those facilities which currently have licenses for other than the maximum capacity, but meet all requirements for the maximum capacity, shall be accorded an increase in capacity at time **of annual visit**, or as requested by the applicant or licensee, whichever is earlier.

In the instance of a dual-licensed foster family home/family child care home, for purposes of determining family child care capacity, a provider's foster children under the age of ten shall be considered as the provider's own children, and shall be counted in the capacity on a "when in the home" basis.

102417 OPERATION OF A FAMILY CHILD CARE HOMES**102417****(Special Needs Children)****POLICY**

As specified in Health and Safety Code Section 1596.750, child care facilities can only provide nonmedical care and supervision to children.

PROCEDURE

The following information is provided as a result of questions posed about the extent to which child care facilities (including family child care homes) can provide care to "special needs" children in light of the above policy:

Issue 1

In already-licensed programs, what is the extent to which the licensee/facility may provide or make provisions for children with medical needs?

102417 OPERATION OF A FAMILY CHILD CARE HOMES (Continued) 102417

PROCEDURE (Continued)

Response

Although staff of family child care homes cannot provide medical care, the licensee or the facility is authorized to do the following:

1. As specified in the California Code of Regulations, Title 22, Section 102417(e), and in the accompanying Evaluator Manual interpretation, the licensee may care for an ill child as long as the ill child is kept separate from other children and no medical care is required for the child or is rendered by the licensee. If the ill child is suspected of having a communicable disease, the licensee shall immediately notify the **parent/authorized representative** and request that the child be removed from the family child care home.
2. As specified in Title 22, Section 102417(g)(7), an emergency information card must be maintained for each child and must include the child's full name, the telephone number and location of a **parent/authorized representative** or other responsible adult to be contacted in an emergency, the name and telephone number of the child's physician, and the **parent's/authorized representative** authorization for the licensee or registrant to consent to emergency medical care.

Specific medical procedures—such as suctioning; oxygen therapy; wound irrigation, drainage and sterile dressing; cauterization and catheter care--can be rendered only by the individual himself/herself in accordance with Health and Safety Code Section 1596.750. Staff of family child care homes are not permitted to render such care to children, even though children are unlikely to be able to render such care to themselves. However, family child care home licensees (if they choose) may permit parents to render such care themselves to their child--or may permit parents to arrange for an appropriately skilled professional to render such care--during the child's attendance at the family child care home. In other words, as long as it is the **parent/authorized representative** (and not the licensee and/or the facility) who renders such care, or who arranges for such care to be rendered, the licensee and/or the facility is not considered to be providing or rendering medical care.

Issue 2

If an otherwise normal child with a severe allergy or diabetes brings a premeasured dose of injectible medication to be administered only in the event of an extreme emergency, how does this fit in with nonmedical care? May facility staff assist with injections?

Response

In general, medical professionals are the only persons permitted by law to administer injections. Parents, however, are permitted by law to give injections to their own children--and certain foster parents are permitted by law to give injections to their foster children.

102417 OPERATION OF A FAMILY CHILD CARE HOMES (Continued) 102417**Emergencies**

In emergencies, licensees should follow the procedures specified in Title 22, Section 102417(g)(7) (please also see Issue 1). In addition, the use of the EpiPen Jr. Auto-Injector is being permitted (as described below).

EpiPen Jr. Auto-Injector

Pursuant to Business and Professions Code Section 2058, nonmedical personnel such as family child care staff may administer the EpiPen Jr. as prescribed by a physician and in emergencies only.

The EpiPen Jr. is a disposable, prefilled automatic injection device designed to deliver a single dose of 0.15 mg. of epinephrine for allergic emergencies. The EpiPen Jr. should only be used by, and/or administered to, a hypersensitive (allergic) person in the event of an allergic emergency as prescribed by a physician. Such emergencies may occur from insect stings or bites, foods, drugs or other allergens, as well as from idiopathic or exercise-induced anaphylaxis.

The use of the EpiPen Jr. is being permitted pursuant to Business Professions Code Section 2058 because of its demonstrated potential to save lives when there may be only minutes to spare; and because it is premeasured and contained in an automatic injection device. However, even if the EpiPen Jr. is used, the licensee must still obtain emergency medical care in accordance with Title 22, Section 102417(g)(7). The use of the EpiPen Jr. is emergency supportive therapy only and is not a replacement or substitute for immediate medical or hospital care.

The following applies to the use of the EpiPen Jr.:

1. Use in accordance with the directions and as prescribed by a physician.
2. Keep ready for use at all times.
3. Protect from exposure to light and extreme heat.
4. Note the expiration date on the unit and replace the unit prior to that date.
5. Replace any auto-injector if the solution is discolored or contains a precipitate. (The EpiPen Jr. has a see-through window to allow periodic examination of its contents. The physician may recommend emergency use of an auto-injector with discolored contents rather than postponing treatment.)

Issue 3

Are there any medical needs that would prohibit accepting a child for care if the performance of a medical procedure were routinely necessary during care hours?

Response

No. If the family child care home is able to meet the individual needs of the child, the child may be accepted into the family child care home; however, please also see the response to Issue 1 for information relating to specific medical procedures.

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)

102417

Issue 4

Whose responsibility is it to be sure that the child's needs are being properly met when extensive medical needs are present?

Response

It is the responsibility of the family child care home and the parents at the time of admission. If the family child care home cannot meet the needs of the child within the parameters of care allowed under Health and Safety Code Section 1596.750, then the family child care home may not be the appropriate placement for the child.

(GASTROSTOMY - TUBE CARE)**PROCEDURE****1. Overall procedures**

- a. An exception is NOT required.
- b. When a family child care home accepts its first child who needs G-tube care, licensing staff must verify that all of the requirements in this policy have been met BEFORE the child receives G-tube care at the family child care home.
- c. Thereafter, the family child care home must notify the Department each time it accepts another child who needs G-tube care. This will enable licensing staff to track how many children are receiving G-tube care in licensed family child care homes and to address any subsequent concerns that may arise.

2. Revised application information

- a. In accordance with Section 102369, the licensee must do the following when the facility wishes to begin providing G-tube care:
 - Notify the Department of the facility's intent to provide G-tube care and obtain approval from the Department to provide this care; and
 - Submit an attachment to the original application information that confirms that the licensee intends to provide G-tube care to a child.
- b. In accordance with Sections 102416 and 102423(a)(2), the revised application information must include a statement on how family child care staff are to be trained (see No. 3 below).

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)

102417

(GASTROSTOMY - TUBE CARE) (Continued)**PROCEDURE** (Continued)**3. Written permission from the child's authorized representative**

- a. In accordance with Section 102423(a)(2), the licensee must obtain written permission from the child's authorized representative for the licensee or designated staff member(s) to:
 - Administer G-tube feeding to the child;
 - Administer liquid medication to the child through a G-tube (if the child requires such medication); and
 - Contact the child's health care provider.
- b. This documentation must include the telephone numbers (both home and work) and address of the child's authorized representative.
- c. The LIC 701B, "Gastrostomy-Tube Care Consent/Verification - Child Care Facilities," is to be used to document permission from the child's authorized representative.

4. Instruction in G-tube feeding/administration of liquid medication by a competent person designated by the child's physician

- a. In accordance with Sections 102416 and 102423(a)(2), the licensee must ensure that staff who administer G-tube feeding to the child are competent to do so. In accordance with Section 102423(a)(2), **STAFF WHO PROVIDE G-TUBE CARE MUST BE AT LEAST 18 YEARS OLD.**
- b. Therefore, for each individual child, each individual licensee or staff person who provides G-tube care to the child must be instructed on how to provide G-tube care to the child by a competent person designated by the child's physician. Instruction in G-tube care is to include:
 - How to administer G-tube feeding to the child;
 - How to administer liquid medication to the child through a G-tube (if the child requires such medication); and
 - Trouble-shooting, including actions to take in an emergency (please see Number 5f as well).

The designated person may be the child's authorized representative if the physician deems the authorized representative competent to provide the instruction.

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)

102417

(GASTROSTOMY - TUBE CARE) (Continued)**PROCEDURE** (Continued)

- c. The child's physician must designate in writing the person authorized to provide instruction in G-tube care. The LIC 701A, "Gastrostomy-Tube Care: Physician's Checklist (Child Care Facilities)," is to be used for this purpose. In accordance with Section 102421, this documentation must be kept in the child's file.
- d. Completion of instruction in G-tube care by the licensee and/or staff person must be verified in writing. The written verification must include the name of the instructor, date of the instruction, areas the instruction covered, and the duration of the instruction (number of hours). In accordance with Sections 102416 and 102423(a)(2), this documentation must be kept on file at the family child care home.
- e. It is also recommended that the licensee or staff person complete additional training in G-tube care. This training may be taken from a G-tube manufacturer's representative or through a local class.

5. Assessment of appropriateness of G-tube care by the child's physician

- a. In accordance with Section 102423(a)(2), a child who is to receive G-tube care in a family child care home must have a medical assessment that includes an assessment of whether the child's medical condition is stable enough for a layperson in a child care setting to safely administer G-tube feeding and/or liquid medication to the child through a G-tube.
- b. The LIC 701A (G-tube physician's checklist) is to be used to document the child's medical assessment for the purposes of receiving G-tube care in a licensed family child care home (a child in a family child care home is not otherwise required to have a medical assessment).

6. Written instructions from the child's physician

The licensee or staff person who provides G-tube care must follow specific written instructions from the child's physician or a health care provider working under the supervision of the child's physician (for example, a physician's assistant, nurse practitioner or registered nurse). These instructions are to be attached to the child's LIC 701A (G-tube physician's checklist).

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)

102417

(GASTROSTOMY - TUBE CARE) (Continued)**PROCEDURE** (Continued)

In accordance with Section 102423(a)(2), the written instructions must be updated annually, or whenever the child's needs dictate (for example, if the child obtains a different type of G-tube or if the frequency of feeding and amount/type of formula or liquid medication to be administered to the child changes). The written instructions can only be updated by the child's physician or a health care provider working under the supervision of the child's physician. In addition, the written instructions must include specific, explicit steps for a layperson to administer G-tube feeding or liquid medication to the child and provide related necessary care. This includes, but may not be limited to, the following:

- a. Any limitations or modifications to normal activity required by the presence of the G-tube.
- b. Frequency of feeding and amount/type of formula or liquid medication to be administered to the child in accordance with the physician's prescription.
- c. Hydration of the child with water or other liquids as determined by the child's physician.
- d. Method of feeding, administering liquid medication or hydrating the child, including how high the syringe is to be held during the feeding. If applicable, this includes how to use an enteral (means "into the stomach") feeding pump.
- e. Positioning of the child.
- f. Potential side effects, e.g., nausea, vomiting, abdominal cramping. (Decompression - the removal of gas in the gastrointestinal tract – is not to be performed on the child beyond briefly removing the cap from the gastric feeding button. Pressing on the child's stomach to try and remove air may harm the child and should not be done. However, the cap may be taken off the gastric feeding button for a brief time only, which may or may not help relieve gas in the child.)
- g. Specific actions to be taken in the event of specific side effects or an inability to complete a feeding, administration of liquid medication to the child, or hydration of the child in accordance with the physician's prescription. This includes actions to be taken in an emergency.
- h. How and when to flush out the G-tube with water, including what to do if the G-tube becomes clogged. Specific instructions on how many cc's of water to use when flushing out the G-tube.

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)

102417

(GASTROSTOMY - TUBE CARE) (Continued)**PROCEDURE** (Continued)

- i. Instructions for proper sanitation, including care and cleaning of the stoma site.
- j. Instructions for proper storage of the formula or the liquid medication.
- k. Instructions for proper care and storage of equipment.
- l. The telephone number and address of the child's physician or designee.

7. Manufacturer's instructions to be kept on file

In accordance with Sections 102421 and 102423(a)(2), a copy of the G-tube manufacturer's instructions must be kept in the child's record. (Note: If there is a conflict between the physician's instructions and the manufacturer's instructions, the physician's instructions should always be followed.)

8. Record of G-tube care

- a. In accordance with Sections 102421 and 102423(a)(2), the licensee or staff person must keep a record of each time he or she administers a G-tube feeding, liquids (hydration) or liquid medication to the child. This documentation must be kept in the child's record, be provided to the child's authorized representative on a daily basis, and be available to licensing representatives upon request.

9. Summary of record requirements

Following is a summary of all of the items that must be on file with regard to providing G-tube care in a licensed family child care home:

- a. Licensee's statement of intent to provide G-tube care, including a statement on how staff are to be trained in G-tube care. Attached to the application in the office file. [2a]
- b. Written permission from the child's authorized representative for the licensee or designated staff member(s) to provide G-tube care to the child. The LIC 701B (G-tube consent/verification) is to be used for this purpose. A separate LIC 701B must be on file for EACH person who provides G-tube care to the child. Included in the child's file and in each respective employee's personnel file at the facility. [3a]

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)

102417

(GASTROSTOMY - TUBE CARE) (Continued)**PROCEDURE** (Continued)

- c. Physician's written designation of person deemed competent to provide instruction in G-tube care. The LIC 701A (G-tube physician's checklist) has space for this information. Included in the child's file at the facility. [4c]
- d. Written verification of the licensee's or employee's completion of instruction in G-tube care. Included in each respective employee's personnel file at the facility. [4d]
- e. Child's medical assessment, including the physician's assessment of the appropriateness of providing G-tube care to the child. The LIC 701A (G-tube physician's checklist) is to be used for this purpose. Included in the child's file at the facility. [5a]
- f. Written instructions from the physician, with any updates attached. Should be attached to the LIC 701A (G-tube physician's checklist). Included in the child's file at the facility. [6]
- g. A copy of the G-tube manufacturer's instructions. Included in the child's file at the facility. [7]
- h. Record of administration of G-tube feedings, liquids (hydration) and liquid medications. Included in the child's file at the facility. [8]

10. Meeting the child's needs

- a. The licensee of the facility in which the care is provided must ensure that the child's needs and the needs of the other children in care are met.
 - b. As appropriate, this includes ensuring that trained back-up staff are available to assist the child if necessary.
 - c. If the child's needs are not met, cite the licensee under Section 102423(a)(2). In addition, if the licensing analyst suspects that something is wrong with the way the licensee is handling the child's G-tube care (e.g., the equipment does not look like it is being properly cared for, the records do not look right, etc.), the licensing analyst should consult with the licensing supervisor to decide whether to contact the child's authorized representative or physician regarding those concerns.
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102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)

102417

(a)(4) **POLICY****Restraints**

- i. If a child in care requires supportive restraints, the use of a restraint must be approved in advance by an individual exception only.

PROCEDURE

To evaluate and process the exception follow Evaluator Manual Reference Material Section 2-5000.

For those family child care homes in which behavioral restraints have been allowed in the past, the Department shall reevaluate the exception when it expires and determine if the exception meets the criteria specified in this policy. In those cases where a family child care home is using behavioral restraints and is not conforming with this policy, the Department shall advise the licensee that the restraints must be discontinued or the child(ren) relocated.

PROCEDURE

If the licensee refuses to discontinue the use of the restraint(s) or to relocate the child(ren), the Department shall take other administrative action as appropriate.

POLICY**Postural Supports/Protective Devices**

- ii. Postural Supports/Protective Devices may be used with prior approval by the Department.

Soft Ties means soft cloth (e.g., Muslim sheeting) that does not cause abrasion, that does not restrict blood circulation, and that can be easily removed in the event of an emergency. Under no circumstances shall supportive restraints include tying, depriving or limiting the use of a child's hands or feet.

Children may be placed in supportive restraints upon the written order of a physician and with the written approval of the child's authorized representative. Such order shall not run beyond 90 days without a reorder by a physician, based upon observation of the child.

Children in supportive restraints shall be observed at least every 30 minutes or more often if needed, by the **person responsible** for the child's care. Observations shall be put in writing (for example, by using a card file, listing, or log. It shall be documented whenever a restraint is applied to or removed from the child. This documentation shall be kept in the child's record on file at the family child care home.

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)

102417

(a)(4) **POLICY** (Continued)

A postural restraint is not permitted without an appropriate fire clearance from the State Fire Marshal. For the purpose of securing an appropriate fire clearance, children in supportive restraints shall be considered non-ambulatory. On the request for a fire clearance, it shall be noted that the family child care home intends to use supportive restraints by marking ITEM 15 on the STD 850.

PROCEDURES

Supportive restraints shall be limited to appliances or devices, including straps, spring-release trays or soft ties, that are used to support a child in a bed, chair or wheelchair to prevent falling.

All requests to use supportive restraints shall be in writing and shall include a written order from a physician indicating the need for such restraints. The Department is authorized to require additional documentation in order to evaluate the request.

Approved supportive restraints shall be fastened or tied in a manner that permits quick release.

The Department shall approve the use of supportive restraints only after appropriate fire clearance, as required by Section 102371, has been secured. Advise the clerk to note on the STD 850, ITEM 15, that the family child care home intends to use supportive restraints.

The Department has the authority to grant conditional and/or limited approvals to use supportive restraints.

(b) **POLICY**

NOTE: Copies of the handout entitled Family Child Care – What are Parents Responsibilities (PUB 72) are available from the Department of Social Services Warehouse.

(a) **POLICY**

An assistant provider under the age of 18 is never to be left **alone with** children. **An adult must always be** present. If the **licensee** is absent from the home an adult **substitute** may be left in charge, provided the **substitute** has been background-and TB-cleared.

The intent of this 20 percent provision is to ensure that the licensee is the primary caregiver and does not delegate this to someone else on a regular basis. **Analysts** are to use the 20 percent provision as a guide and should look at the reason for the absence (e.g., a two-day conference regarding child care would be appropriate, as well as care related tasks, including but not limited to, picking up children from school, child's medical/dental appointments, grocery shopping, etc.). Outside employment is not considered temporary, nor within the intent of the 20 percent provision.

While the regulation refers to "20 percent per day", the allowable time for absence may be used cumulatively. That is, the licensee may be absent for vacations, conferences or any emergency which may demand the licensee's attention, up to 20 percent of the time the day care home cares for children. Therefore, within a year's time, a licensee who operates year round may be absent from the home up to a total of 10.4 weeks per year, provided a substitute caregiver is present in the home.

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)**102417****(a) POLICY (Continued)**

Additionally, a licensee may not engage in outside employment which may directly or indirectly impair her function as the primary caregiver. That is, the licensee may not engage in outside employment during the hours the home normally provides care; and may not engage in other employment (such as night shift work) which would require her to sleep during the day on a regular basis, and employ a substitute caregiver as the primary caregiver.

The licensee may either close down and notify the parents or arrange for a substitute, provided that the criteria as specified below is met:

1. The substitute is at least 18 years of age as provided in Section 102352(a).
2. The substitute has signed the Criminal Record Statement, (LIC 508) and has submitted their fingerprints as required by Section 102370(b).
3. The substitute has submitted a Child Abuse Index form (LIC 198A) as required by Section 102370.2(b).
4. The substitute has obtained a TB clearance as required by Section 102369(b)(9).
5. In order to provide night care (overnight care, less than 24 hours):

The provider must remain awake whenever children are awake.

The door to the room where the provider is sleeping must remain open when the provider is sleeping.

If the sleeping arrangements are not situated in such a way that the provider can be assured of hearing a child waken, a monitor system must be used, and must be maintained in good working order at all times.

The home must be equipped with smoke alarms and a fire extinguisher approved for home use in or near all sleeping areas.

Appropriate cribs or beds, complete with adequate and clean bedding and nightclothes, must be available.

(b) POLICY

If there are documented sanitation problems, discuss with your supervisor the need for consultation from a local sanitation consultant.

(d) POLICY

Licensees can be required to provide toys, that the toys be safe as reflected in Section 102417(d), and that the toys be age-appropriate (e.g., bicycles for infants are not appropriate). It is a generally accepted practice to require toys at the prelicensing visit in order to demonstrate readiness for operation.

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)**102417****(d) POLICY (Continued)**

Section 1596.846 is added to the Health and Safety Code which states in part that a baby walker shall not be kept or used on the premises of a Child Care Facilities. A baby walker is defined as an article known as a “baby bouncer”, “walker jumper”, “baby walker” or any similar article.

The above Health and Safety Code is not intended to prohibit the storage and use of a baby walker in a provider’s own home for their own children. The intention is to prohibit the use of a baby walker during the hours of operation as a child care home. Therefore, baby walkers may be in a child care home, but they cannot be used by the children and they must be stored in an area not accessible to children during the hours of operation as a child care home.

PROCEDURE

If toys are not available during the preclicensing visit, the LIC 809 **Facility Evaluation Report** should so state. Discuss with your supervisor if it is acceptable for the applicant to submit photos and receipts of purchased toys. If this is agreeable, the LIC 809 should reflect that no toys are available at preclicensing visit, and that prior to issuance of license, the applicant will submit photos and receipts for purchased toys.

(e) POLICY

Ill children can be accepted into the family child care home as long as no medical care is required by the child or rendered by the licensee. Additionally, the ill child must be kept separate from the other children. If the ill child is suspected of having a communicable disease, the licensee shall immediately notify the child’s **parent/authorized representative** and request that the child be removed from the family child care home.

Additionally, the licensee shall determine the nature of the child’s illness to establish that other children in care have not been exposed to any major health risks. The licensee may determine the nature of the child’s illness by contacting the child’s **parent/authorized representative** or examining physician. If there are health or safety concerns for other children in care as a result of the contact with the child’s **parent/authorized representative** or physician, the other children’s parents should be informed.

(e) PROCEDURE

For information on the use of the EpiPen Jr. Auto-Injector as prescribed by a physician in the event of an allergic emergency, please see Issue 2 of the section on special needs children under Section 102417 above.

(g)(1) POLICY

California Code of Regulations **Title 22** Section 102417(g)(1) also applies to wood or coal burning stoves used for heating purposes.

Small and large family child care homes are required to have **both** a fire extinguisher **and** a smoke detector device which meet standards established by the State Fire Marshal.

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)**102417**

(g)(3)

POLICY

When children are being cared for on both floors of a multiple story home, both the upstairs and downstairs must be barricaded when day care children are on both floors. A safety gate in front of the room may be used to prevent access to stairs rather than a barricade directly on the stairway.

(g)(4)

POLICY

A trigger lock is a separate key lock usually fitting inside the trigger guard which totally prevents firing. The normal safety lock that is part of the firearm is not a trigger lock.

No other alternative to locked storage of firearms is acceptable.

(g)(5)

POLICY

Pool inaccessibility does not relieve the licensee from his/her obligation to provide supervision. Both supervision of children and pool inaccessibility are required.

Pool covers embossed or labeled "F 1346-91" by the American Society for Testing Materials will support the weight of an adult. Pool domes are tent-like structures that fit over the pool for heating purposes. Domes are not designed to keep children out and are not acceptable substitutes for covers.

Fences must be in good repair and completely surround the pool. Division 1, Appendix Chapter 4 of the 1994 Uniform Building Code provides in pertinent part:

1. Bottom

The bottom of the fence shall be no more than two inches from the ground (four inches if the fence is on a hard surface such as a concrete deck or mounted on top of an above ground pool structure).

2. Sides

Separation Fence

No door or window of the home shall provide direct access to the pool. If a wall of the dwelling contains doors or windows which provide direct access to the pool, a separation fence shall be provided.

Indentations and Protrusions

On the side away from the pool, protrusions, and indentations are prohibited if they render the barrier easily climbable by children under the age of six. In particular, horizontal bars or beams on the side away from the pool shall be spaced at least 45 inches apart.

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)**102417**

(g)(5)

POLICY (Continued)**Openings**

No opening shall permit passage of a 1 ¾ - inch (44 mm) diameter sphere (golf ball, which has a diameter of 42.67 mm, provides a good approximation.) However, for picket fences (fencing made up of vertical and horizontal members), if the tops of the horizontal beams are at least 45 inches apart, the pickets may be up to four inches apart.

Thickness

Wire used in chain link fences must be thick enough that it cannot easily be broken, removed, or stretched by children. Chicken wire, for example, is unacceptable.

Mesh fences (and/or any fence materials) that meet regulatory standards for swimming pool fencing may be used provided that the licensee agrees on the LIC 809 Facility Evaluation Report that the fence will remain in place whenever licensed care is provided, and so long as the fence makes the swimming pool, body of water, or other hazard inaccessible to children, as determined by Community Care Licensing Staff.

(g)(5)

PROCEDURE

A waiver to the requirements for pool covers and fences may be granted as follows:

1. The pool is regulated by the State Department of Health (examples include pools situated in apartment houses, mobile home parks, auto and trailer parks, condominiums, townhouses, public or private schools, hotels, motels, and homeowner's associations) and the waiver request is supported by a copy of a current certificate of compliance with public pool regulations (24 California Code of Regulation Part 2, State Chapter 90) issued by the local health authority. This documentation must be updated for continued approval at the next evaluation visit.
2. Apartment complexes in which the building encloses the pool area and is itself the pool barrier pose special problems. In this case, the waiver shall require either of the following for each door or the apartment which gives direct access to the pool.
 - a. Installation of an alarm on the door of the licensee's apartment. The alarm shall meet the requirements of the 1994 edition of the Uniform Building Code Appendix Chapter 4, Division 1, Section 421.(5) (2). [Section 421.1(5) (2) provides that the alarm must be capable of being heard throughout the house during normal household activities. The alarm must also sound continuously for at least ten (10) (seconds) immediately after the door and its screen, if present, is opened. A switch or touch pad must be installed at least 4 ½ feet from the floor which permits the alarm to be deactivated for a single opening of no more than 15 seconds. The alarm must automatically reset under all conditions.) Or,

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)**102417**

(g)(5)

PROCEDURE (Continued)

- b. Installation of self-closing and self-latching devices with the release mechanism located a minimum of 54 inches above the floor.

Where windows of the apartment give direct access to the pool, the waiver shall also require that the window be secured so that it cannot be removed by the children such as clamps fixed in place by screws for aluminum windows or slats nailed into the tracks of wood framed windows.

- 3. The degree of protection afforded is substantially the same as that afforded by the regulations. In processing the waiver, the local building department may be used as a consultant.

The following examples of waivers are not intended to be all inclusive:

- a. When doors or windows of the facility provide direct access to the pool and the proximity of the pool to the building does not permit the construction of a separation fence, a waiver may be granted as described in 2., above.
- b. A waiver may be granted to allow reduction in the size of fence openings using wire mesh or Plexiglas meeting the above thickness standards and securely fastened to the fence.
- c. A waiver may be granted to allow the use of slats fastened at the top or the bottom of a chain link fence to reduce the size of the openings.
- d. A waiver may be granted to permit gates that are not equipped with self-latching or self-closing devices or which do not open away from the pool. These waivers shall be granted only if the licensee agrees to the following conditions: 1) There is at least one access gate to the pool that meets the regulatory requirements. 2) This gate is used as the primary access to the pool. 3) The remaining gates shall be kept locked at all times.

(g)(6)

POLICY

If outdoor play space is not fenced, the licensee should sign a statement on the LIC 809 Facility Evaluation Report that the licensee will provide on-site supervision at all times. Occasional checking is not adequate in this situation.

Fencing used to make a hazard inaccessible from an activity space may obscure the hazard from view. However, if the hazard is a pool, including swimming pools, fixed-in-place wading pools, hot tubs, spas, fish ponds or similar bodies of water, the fence shall be constructed so that it does **NOT** obscure the pool from view.

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)**102417**

(g)(7)

PROCEDURE

For information on the use of the EpiPen Jr. Auto-Injector as prescribed by a physician in the event of an allergic emergency, please see Issue 2 of the section on special needs children under Section 102417 above. Also see information on gastrostomy tube care, immediately following the EpiPen Jr. Auto-Injector information.

(g)(8)

POLICY

Health and Safety Code Section 1596.841 requires that family child care homes maintain a facility roster which includes children's names, addresses, and daytime phone numbers for the child's parent/authorized representative, and the name and phone number of the child's physician. In addition, Health and Safety Code Section 1596.876 requires the licensee or person in charge of a family child care home to release the address and phone number of the parent/authorized representative or guardian of any child to a peace officer.

PROCEDURE

Notify the licensee at the time of a site visit that the Health and Safety Code requirements are in effect. The LIC 809 Facility Evaluation Report will be used to document that the licensee was so instructed. If the licensee does not comply with these requirements cite as a deficiency using the appropriate Health and Safety Code Section.

The Identification and Emergency Information (LIC 601) and Consent for Medical Treatment (LIC 627) may be used for this purpose.

See California Code of Regulations Section 102417(g)(7).

(g)(9)

POLICY

The licensee shall include an Earthquake Preparedness Checklist as an attachment to the written disaster plan of action pursuant to Health and Safety Code Section 1596.867.

(g)(9)

PROCEDURE

The Emergency Care and Disaster Plan–Family Child Care Home (LIC 610A) may be used for the purpose of this subsection.

If a family child care home is located in a second-story apartment with only one exit from the apartment and general fire safety is questionable, the licensee can be requested to demonstrate his/her disaster plan. If care is provided to nine or more children, a fire clearance should address this concern.

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)

102417

(g)(9)

PROCEDURE (Continued)

Health and Safety Code Section 1596.867 states in part:

- a. Child day care facilities, as defined in Section 1596.750, shall include an Earthquake Preparedness Checklist as an attachment to the disaster plan prescribed by Section 1597.54. However, the Earthquake Preparedness Checklist shall not be considered a requirement for obtaining or maintaining a license for a family child care home. The Earthquake Preparedness Checklist shall be made accessible to the public at the family child care home. The licensing agency shall not monitor or be responsible for enforcing any provision contained in the Earthquake Preparedness Checklist or ensuring that the checklist is made accessible to the public.
- b. The Earthquake Preparedness Checklist shall not exceed two typewritten pages and the Department may add to or delete from the list, as it deems appropriate. The checklist may include, but not be limited to, all the procedures that are listed in the following proposed Earthquake Preparedness Checklist. A licensee of a family child care home shall have the option of selecting from the checklist the procedures, if any, the licensee chooses to use in the family child care home.

Earthquake Preparedness Checklist**Eliminate potential hazards in classrooms and throughout the site:**

- Bolt book cases in high traffic areas securely to wall studs.
- Move heavy books and items from high to low shelves.
- Secure and latch filing cabinets.
- Secure cabinets in high traffic areas with child safety latches.
- Secure aquariums, computers, typewriters, TV-VCR equipment to surfaces, such as by using Velcro tabs.
- Make provisions for securing rolling portable items such as TV-VCRs, pianos, and refrigerators.
- Move children's activities and play areas away from windows, or protect windows with blinds or adhesive plastic sheeting.
- Secure water heater to wall using plumber's tape.
- Assess and determine possible escape routes.

Establish a coordinated response plan involving all of the following:**Involving Children:**

- Teach children about earthquakes and what to do (see resource list below).
- Practice "duck, cover, and hold" earthquake drills under tables or desks no less than four times a year.

Involving Parents:

- Post, or make available to parent's/authorized representatives copies of the school earthquake safety plan (including procedures for reuniting parents or alternate guardians with children, location of planned evacuation site, method for leaving messages and communicating).
- Enlist parent/authorized representative and community resource assistance in securing emergency supplies or safeguarding the child day care site:

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)**102417**

(g)(9)

PROCEDURE (Continued)

- Store a 3-day supply of nonperishable food (including juice, canned food items, snacks and infant formula).
- Store a 3-day supply of water and juice.
- Store food and water in an accessible location, such as portable plastic storage containers.
- Store other emergency supplies such as flashbacks, a radio with extra batteries, heavy gloves, trash bags, and tools.
- Maintain a complete, up-to-date listing of children, emergency numbers, and contact people for each classroom stored with emergency supplies.

Involving child day care personnel and local emergency agencies:

- Identify and assign individual responsibilities for staff following an earthquake (including, accounting for and evacuating children, injury control, and damage assessment).
- Involve and train all staff members about the earthquake safety plan, including location and procedure for turning off utilities and gas.
- Contact nearby agencies (including police, fire, Red Cross, and local government) for information and materials in developing the child day care center earthquake safety plan.

For more free resources contact:

- (1) Federal Emergency Management Agency (FEMA)
- (2) Office of Emergency Services (OES)
- (3) Red Cross

- c. Nothing in this section shall be construed to prevent the adoption or enforcement of earthquake safety standards for child day care facilities by local ordinance.
- d. Nothing in this section shall be construed to prevent the Department from adopting or enforcing regulations on earthquake safety or making earthquake safety drills mandatory.

(1)

POLICY

It is important to remember that a citation for deficiency(ies) of this regulation section is to be done only when you observe transporting of children/infants by the licensee or when the licensee voluntarily states he/she transports children. In this case, you should request to inspect the vehicle to ensure it is safe and that there are seat belts, car seats for infants, if appropriate, and that the licensee's and assistant's (if appropriate) driver's license is current and valid.

Licensees shall not be required to have their motor vehicles periodically safety checked.

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)**102417****PROCEDURE**

Review the licensee's and assistant's (if appropriate) driver's license to ensure it is current and valid.

Seating capacity shall be verified by reviewing the vehicle owner's manual or by counting the number of passenger restraints (seat belts) in the vehicle.

If you observe any vehicle used to transport children, which appears to be in an unsafe operating condition (e.g., bald tires, broken headlight, shattered windshield, etc.) develop a plan with the licensee to (1) correct the obvious problem(s) and (2) submit to the licensing agency a safety check from a service station or garage certified to perform this service.

If you observe licensees transporting children, check to ensure the vehicle has seat belts. If infants are being transported, ensure they are in an appropriate car seat which is secured in the vehicle. If car seats are not being used and infants are transported, advise the licensee they should request that the **parent(s)/authorized representative(s)** of the infant(s) loan the licensee the infant's own car seat for use during those times the licensee will be transporting the infant(s).

POLICY

The pamphlet "Facing the Facts: A Parents Guide to the Understanding of Child Sexual Abuse" (PUB 106) is no longer available. It is not known when, or even if it will ever be reprinted for distribution. Therefore citations are not to be issued for noncompliance. Licensees should be advised not to attempt to reorder PUB 106 from the Department of Social Services Warehouse and that when their current supply is depleted, they may ignore the regulation until notified by Community Care Licensing Division that the pamphlet is again available.

102423 PERSONAL RIGHTS**102423****(a)(2)****POLICY**

Regulations do not require specific sleeping accommodations per se for napping children. Therefore, if a licensee chooses to let children nap on the floor using a blanket, mat, etc., to lie on, this is acceptable. The licensees can be asked about their sleeping accommodations plan and suggestions may be made. The regulations are silent in regards to specific sleeping accommodations; however, safe accommodations must be provided. For example, if only beds are provided for infants where the infant may roll off, then the beds are not considered safe.